

## Rural Utilities Service, USDA

## § 1786.35

(d) *Repayment of FFB.* Prior to 1:00 p.m. prevailing local time in New York, New York, on the settlement date, the borrower shall wire immediately available funds to RUS through the Department of the Treasury account at the Federal Reserve Bank of New York or shall provide for payment to RUS in another manner acceptable to RUS and FFB, in an amount sufficient to pay the outstanding principal of the FFB loan being prepaid plus accrued interest from the last payment date to and including the settlement date.

(e) *Documentation.* The borrower shall deliver, or cause to be delivered to RUS and FFB, not less than 3 business days prior to the settlement date, written notice of the settlement date and a complete listing of each FFB loan advance to be prepaid or partially prepaid, in the format required by § 1786.31(a)(2). In the event that a private loan is used in connection with the prepayment, the following executed documents, opinions and material shall be delivered at the settlement:

(1) The guaranteed note evidencing the private loan.

(2) The guarantee.

(3) The loan guarantee agreement.

(4) Copy of the private loan agreement between the lender and the borrower.

(5) Evidence that the borrower has received all approvals which are required under Federal or state law, loan agreements, security agreements, existing financing arrangements, or any other agreement to which the borrower is a party.

(6) An amendment in recordable form revising the description of the obligations secured by the mortgage including the obligation of the borrower to reimburse RUS for any amounts that RUS may pay under the guarantee.

(7) An approving opinion of the borrower's legal counsel to the effect that the guaranteed note evidencing the private loan is a valid and legally binding obligation of the borrower which is secured under the mortgage, and the priority of the mortgage, as amended pursuant to paragraph (e)(6) of this section, remains undisturbed.

(8) An approving opinion of the lender's legal counsel to the effect that the

loan guarantee agreement is a valid and legally binding obligation of the lender.

(9) Such other opinions of counsel as may be required by the Administrator.

(10) Copies of any other documentation required by the lender.

(11) Copies of any other documentation required by RUS to ensure that the obligations of the borrower to reimburse RUS for any amounts that RUS pays under the guarantee or may advance in connection with the private loan are adequately secured under the mortgage.

(Approved by the Office of Management and Budget under control number 0572-0088)

### § 1786.33 Forms.

Guarantees and loan guarantee agreements executed by RUS pursuant to this subpart will be on forms prescribed by RUS. Such forms will include, without limitation, additional details on servicing, procedures for notifying RUS of a default, the manner for requesting payment on a guarantee. The Notice of Intent to Prepay the Federal Financing Bank shall be substantially in the form specified by RUS. RUS may also prescribe standard forms of certifications to be used in connection with materials required to be furnished pursuant to § 1786.31 of this subpart.

### § 1786.34 Access to records of lenders, servicers, and trustees.

The lender, the servicer, or the trustee will permit representatives of RUS (or other agencies of the U.S. Department of Agriculture authorized by that Department) to inspect and make copies of any of their records pertaining to RUS guaranteed loans. Such inspection and copying may be made during regular office hours of the respective party or any other time the party and RUS find convenient.

### § 1786.35 Loss, theft, destruction, mutilation, or defacement of RUS guarantee.

(a) *Authorized representative.* Except where the evidence of debt was or is a bearer instrument, the RUS Administrator is authorized on behalf of RUS to issue a replacement guarantee(s) for

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one(s) which may have been lost, stolen, destroyed, mutilated, or defaced. Such replacement(s) shall be issued only to the lender or holder and only upon receipt of an acceptable certificate of loss and an indemnity bond.

(b) *Requirements.* When a guarantee(s) is lost, stolen, destroyed, mutilated, or defaced while in the custody of the lender, or holder, the lender will coordinate the activities of the party who seeks the replacement documents and will submit the required documents to RUS for processing. The requirements for replacement are as follows:

(1) A certificate of loss properly notarized which includes:

(i) Legal name and present address of the owner, requesting the replacement forms;

(ii) Legal name and address of lender of record;

(iii) Capacity of person certifying;

(iv) Full identification of the guarantee, including the name of the borrower, date of the guarantee, face amount of the evidence of debt purchased, date of evidence of debt and present balance of the loan. Any existing parts of the documents to be replaced should be attached to the certificate;

(v) A full statement of circumstances of the loss, theft, or destruction of the guarantee; and

(vi) The lender or holder, shall present evidence demonstrating current ownership of the guarantee and note. If the present holder is not the same as the original lender, a copy of the endorsement of each successive holder in the chain of transfer from the initial private lender to present holder shall be included. If copies of the endorsement cannot be obtained, best available records of transfer shall be presented to RUS (e.g., order confirmation, cancelled checks, etc).

(2) An indemnity bond acceptable to RUS shall accompany the request for replacement except when the holder is the United States, a Federal Reserve Bank, a Federal Government Corporation, a state or territory, or the District of Columbia. The bond may be with or without surety. The bond shall be with surety except when the outstanding principal balance and accrued interest due the present holder is less

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than \$1,000,000 verified by the lender in writing in a letter of certification of balance due. The surety shall be a qualified surety company holding a certificate of authority from the Secretary of the Treasury and listed in Treasury Department Circular 580.

(3) All indemnity bonds shall be issued and/or payable to the United States of America acting through the Administrator of the Rural Utilities Service. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save RUS harmless against any claim or demand which might arise or against any damage, loss, costs, or expenses which might be sustained or incurred by reasons of the loss or replacement of the instruments.

## § 1786.36 Other prepayments.

Nothing contained in this subpart shall prohibit a borrower from making prepayments of FFB loans in accordance with the terms thereof.

## § 1786.37 Application of regulation to previous prepayments.

Nothing contained in this subpart shall affect the validity of prepayments made or guarantees issued pursuant to previous regulations. Those borrowers, however, that completed a prepayment pursuant to section 306(A) of the RE Act and closed loans prior to February 27, 1988, may, in their discretion request RUS approval and if required by prior regulations the concurrence of the Secretary of the Treasury, of any amendments necessary to make the terms and conditions of such loans consistent with, or to consolidate such loans with, loans guaranteed under these regulations.

## § 1786.38 Judicial review.

This subpart is intended to set forth RUS policies and procedures for the orderly administration of the provisions of section 306(A) of the RE Act, section 633 of the continuing resolution, and section 637 of the 1989 Appropriations Act and is not intended to create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers or any person.